

2009 Montana Legislative Update for Public Defenders

<http://www.opd.mt.gov/training/09/LegislativeUpdate/LegislativeUpdatePowerpoint.pdf>

HB 228: Citizen and Self-Defense and Firearm Rights; Rewriting the Rules of Self-Defense

This bill is codified at 45-3- part 1; 46-5-Part 3; 70-24-Part 1; and 46-16-Part 1. Effective immediately.

SIGNIFICANT CHANGE OF LAW!!

- In a criminal trial, when the defendant has **offered evidence** of justifiable use of force, **the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified.**

SB 96: Revise Rules on Mental Illness Evaluations in Criminal Justice System in Regard to State Hospital

This bill amends 46-14-311;and 46-18-111. Effective immediately.

SB 263: Revise Public Defender Laws – Recoupment of Costs

This bill amends 46-18-113 and 47-1-111. Effective July 1, 2009.

PRACTICE POINTERS:

- You must advise your clients that they may have to pay the actual costs (attorney time + any experts or 3rd party costs) if they go to trial and lose.
- You must make sure the court accurately assesses the client's ability to pay.
- You must present evidence as to your client's ability to repay.
- Before you resolve any case you must know what the actual accrued costs are.

SB 341: Adding Prosecution and Pretrial Supervision Costs to Fees Paid by a Defendant

Sections of this bill are codified at 46-18-Part 2 while others amend 46-18-232. Effective July 1, 2009.

HB 177: Define a “conditional discharge” for probation and parole and establish grounds for revoking conditional discharges

This bill is codified at 46-23- Part 10. Effective October 1, 2009.

HB 407: Protect Children from Sexual Exploitation and Abuse by Sexual Predators

Sections of this bill amend 45-5-625 while other sections are codified at 46-4-Part 3. Effective October 1, 2009.

HB 534: Require Audio-Video Recording of Custodial Interrogations and Establish Exceptions to the Law.

This bill is codified at 46-Chapter 4. Effective October 1, 2009.

DEFINITIONS

- (1) **Custodial Interrogation:** an interview conducted by a peace officer in a place of detention for the purpose of investigating a felony if the interview is reasonably likely to elicit a response from the person being interviewed that may incriminate the person being interviewed with regard to the commission of an offense.
- (2) **Electronic recording:** audio, visual record that is authentic and unaltered
- (3) **Place of detention:** jail, police or sheriff's station, holding cell, correctional or detention facility, office, or other structure in this state where persons are held in connection with criminal charges or juvenile delinquency proceedings.
- (4) **Statement:** communication that is oral, written, sign language, or nonverbal.

NOTE THAT:

- The court still has the ability to allow statements into court that were not recorded if:
 - The state proves that statements were made voluntarily by the defendant without a recording.
 - If the questions put forth by law enforcement were part of a routine booking or processing; if the interviewee, before the interview began, unambiguously requested the interview not be recorded;
 - If the equipment used to record the interview failed, yet the failure was unforeseeable.

NOTE ALSO THAT:

- If the court does in fact allow an interview to be presented in court when the interview was not recorded, the court must issue a cautionary instruction to the jury.
- Finally, a copy of the interview must be held in evidence by law enforcement until all appeals, post-conviction, and habeas corpus matters have expired.

SB 91: Revise Waiver of Attorney by Youth for Custody Hearings

This bill amends 41-5-331 and 41-5-333. Effective October 1, 2009.

BE AWARE THAT:

- Parents can no longer waive representation for a juvenile at a custody hearing without first meeting with the attorney.
- OPD attorneys must meet with juveniles prior to these hearings

SB 157: Revise Ability to Waive Audio-Video Hearings for Initial Mental Health Proceedings

This bill amends 53-21-140. Effective October 1, 2009.

SB 476: Increase Monetary Amount Threshold for Felonies

This bill amends 45-2-101; 45-6-101; 45-6-103; 45-6-104; 45-6-301; 45-6-309; 45-6-311; 45-6-312; 45-6-313; 45-6-316; 45-6-317; 45-6-325; 45-6-332; 45-6-341; and 45-7-210. Effective October 1, 2009.

SB 235: Revise Law on Who May Perform Psychological Testing

This bill amends 37-17-104; and 37-23-102. Effective October 1, 2009.

HB 132: Diversion of Involuntary Commitment to Short-Term Inpatient Treatment
Sections of this bill amend 53-21-102; 53-21-122; 53-21-123; 53-21-162; and 53-21-1001 while other sections are codified at 53-Chapter 21. Effective October 1, 2009.

HB 55: Geographical Restrictions on Juvenile Sex Offenders
This bill amends 41-5-215 and 41-5-1513. Effective immediately.

HB 308: Donation of Food as Method of Community Service
This bill amends section 46-18-201. Effective immediately.

HB 222: Revocation of Hunting and Fishing Privileges until Fines for Title 87 Offenses are Paid
This bill amends 87-1-102 and 87-2-106. Effective immediately.

SB 171: Create the Law of Criminal Damage to Rental Property
This bill is codified at 45-6-Part 1. Effective immediately.

SB 214: Increase Penalties for Cattle Theft
Sections of this bill are codified at 45-6-Part 3 while other sections amend 45-2-311; 45-6-301; and 45-6-327. Effective immediately.

HB 269: Monetary Credit for Jail Sentence
This bill amends 46-17-302 and 61-7-118. Effective July 1, 2009.

HB 223: Revocation of Hunting and Fishing Licenses for Certain Offenses on Fish, Wildlife, and Parks Land
This bill amends 23-1-106; 45-6-101; 45-6-203; and 87-1-102. Effective October 1, 2009.

HB 536: Revise Probationary License Requirements in Regards to Interlock Ignition Devices
This bill amends 61-5-208; 61-8-442; and 61-8-733. Effective October 1, 2009.